

TOWN OF DAVIE

TOWN COUNCIL AGENDA REPORT

TO: Mayor and Councilmembers

FROM: Monroe D. Kiar (954)584-9770

SUBJECT: Resolution

TITLE OF AGENDA ITEM: A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE SETTLEMENT AGREEMENT ENTERED INTO BETWEEN THE TOWN OF DAVIE AND SOUTHERN HOMES OF DAVIE II, L.L.C. AND PROVIDING FOR AN EFFECTIVE DATE.

REPORT IN BRIEF: Southern Homes of Davie II, L.L.C., is the owner of certain real property located within the Town of Davie. In 1974, the subject property was owned by Imagination Farms, Inc. Imagination Farms Inc., instituted a declaratory action against the Town of Davie ("Town") in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, to determine whether a previously attempted annexation of the subject property into the Town was effective. On May 3, 1979, a Final Judgment was entered in the lawsuit. The Final Judgment held that the subject property was agrarian in nature and predominantly used for agricultural purposes and would not need, require or stand to benefit from municipal services which could or would be supplied by the Town. The Final Judgment also held that should the subject property become urban in character and require municipal services, that the parties to the lawsuit were to use their best efforts to facilitate annexation of the subject property into the Town.

Thereafter, the Florida Legislature, pursuant to Chapter 84-420, laws of Florida, dissolved the City of Hacienda Village and annexed the land previously included in that dissolved city into the Town. The land annexed into the Town included the legal description of the subject property. The Broward County Revenue Collector began collecting taxes for the subject property based on the Town's milage code and as such, the Town began receiving tax funds for the subject property in calendar year 1999. The tax funds were based on a vacant residential use and not on an agricultural use.

Southern Homes intends to develop the subject property for residential use. The Resolution is being set before the Town Council because the parties desire to resolve any confusion regarding the effect of the Final Judgment on the subject property and to mutually agree that the subject property is within the municipal boundaries of the Town. Simultaneously, the Town will file an application in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, to clarify that the 1979 Final Judgment did not result in the ouster of the subject property from the Town, but was injunctive in nature and merely for the purpose of restraining the Town from exercising municipal functions over the subject property.

The Settlement Agreement which is attached to the resolution as Exhibit "A", meets the beneficial interest of both parties and will assist in resolving this dispute.

PREVIOUS ACTIONS:

CONCURRENCES:

FISCAL IMPACT:

RECOMMENDATION(S): Motion to approve the resolution.

ATTACHMENTS: Resolution and settlement agreement

RESOLUTION NO. _____

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, ACCEPTING AND RATIFYING THE SETTLEMENT AGREEMENT ENTERED INTO BETWEEN THE TOWN OF DAVIE AND SOUTHERN HOMES OF DAVIE II, L.L.C. AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, a proposed Settlement Agreement between the Town of Davie ("Town") and Southern Homes of Davie II, L.L.C. ("Southern Homes") is attached hereto as Exhibit "A"; and

WHEREAS, Southern Homes is the owner of the subject property identified in the Settlement Agreement; and

WHEREAS, in 1974, the subject property was owned by Imagination Farms, Inc., which instituted a declaratory action against the Town of Davie in the Circuit Court for the 17th Judicial Circuit, in and for Broward County, Florida, Case Number 74-14130, to determine whether a previously attempted annexation of the subject property into the Town was effective ("lawsuit"); and

WHEREAS, on May 3, 1979, a Final Judgment, as recorded in Official Records Book 8196, Page 98, was entered in the lawsuit; and

WHEREAS, the Final Judgment held that the subject property was agrarian in nature and predominantly used for agricultural purposes and would not need, require or stand to benefit from municipal services which could or would be supplied by the Town; and

WHEREAS, the Final Judgment also held that should circumstances change and the subject property become urban in character and require municipal services, then the parties to the lawsuit were to use their best efforts to facilitate annexation of the subject property into the Town; and

WHEREAS, Chapter 84-420, laws of Florida, dissolved the City of Hacienda Village and annexed the land previously included in that dissolved city into the Town; and

WHEREAS the land annexed into the Town included the legal description of the subject property; and

WHEREAS, the Broward County Revenue Collector began collecting taxes for the subject property based on a Town mileage code and as such, the Town began receiving tax funds for the subject property in the calendar year 1999 based on a vacant residential use and not an agricultural use; and

WHEREAS, Southern Homes intends to develop the subject property for residential use; and

WHEREAS, the parties hereto desire to resolve any confusion regarding the effect of the Final Judgment on the subject property and to clarify and agree that the subject property is within the municipal boundaries of the Town; and

WHEREAS, simultaneously herewith, the Town will file an application in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, to clarify that the 1979 Final Judgment did not result in the ouster of the subject property from the Town, but was only injunctive in nature and merely restrained the Town from exercising municipal functions over the subject property; and

WHEREAS, the parties believe that the Settlement Agreement, which is attached hereto as Exhibit "A", meets the beneficial interest of both parties and will assist in resolving this dispute. NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. The Town Council hereby adopts and ratifies the Settlement Agreement entered into between the Town of Davie and Southern Homes of Davie II, L.L.C. which is attached hereto as Exhibit "A."

SECTION 2. Upon any failure of Southern Homes of Davie II, LL.C. to abide by the written terms of the Settlement Agreement, this Resolution shall be deemed rejected.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS _____ DAY OF _____, 2005.

MAYOR/COUNCILMEMBER

ATTEST:

TOWN CLERK

APPROVED THIS _____ DAY OF _____, 2005.

IN THE CIRCUIT COURT OF THE
17TH JUDICIAL CIRCUIT, IN AND
FOR BROWARD COUNTY, FLORIDA

CASE NO:

TOWN OF DAVIE, a municipal corporation
located in Broward County, Florida,

Plaintiff,

vs.

SOUTHERN HOMES OF DAVIE II, L.L.C.
a Florida limited liability company

Defendant,

SETTLEMENT AGREEMENT BETWEEN THE TOWN OF DAVIE AND
SOUTHERN HOMES OF DAVIE II, L.L.C.

This Settlement Agreement is entered into on this ____ day of _____, 2003
by and between the TOWN OF DAVIE, a municipal corporation located in Broward County,
Florida, existing under the laws of the State of Florida ("TOWN") and SOUTHERN
HOMES OF DAVIE II, L.L.C., its successors and assigns ("SOUTHERN").

WHEREAS, SOUTHERN is the owner of the property described on the attached
Exhibit "A" ("Subject Property"); and

WHEREAS, in 1974, the Subject Property was owned by Imagination Farms, Inc.,
which instituted a declaratory action against the TOWN in the Circuit Court of the 17th
Judicial Circuit in and for Broward County, Florida, Case No. 74-14130, to determine
whether a previously attempted annexation of the Subject Property into the TOWN was
effective (the "Lawsuit"); and

WHEREAS, on May 3, 1979, a Final Judgment, as recorded in Official Records Book
8196, Page 98, was entered in the Lawsuit ("Final Judgment"); and

WHEREAS, the Final Judgment further stated that the Subject Property was agrarian
in nature and predominantly used for agricultural purposes and would not need or require

or stand to benefit from municipal services which could or would be supplied by the TOWN, but that, should circumstances change and the Subject Property become urban in character and require municipal services, the parties to the Lawsuit were to use their best efforts to facilitate annexation of the Subject Property into the TOWN; and

WHEREAS, Chapter 84-420, Laws of Florida, which dissolved the City of Hacienda Village and annexed the land previously included in that dissolved City into the TOWN, included the legal description of the Subject Property as if it were part of the TOWN; and

WHEREAS, the Broward County Revenue Collector began collecting taxes for the Subject Property based on a TOWN millage code and therefore, the TOWN began receiving tax funds for the Subject Property in calendar year 1999, based on a vacant residential use and not on agricultural use; and

WHEREAS, SOUTHERN, intends to develop the Subject Property for residential use; and

WHEREAS, the parties hereto desire to resolve any confusion regarding the affect of the Final Judgment on the Subject Property and to clarify and agree that the Subject Property is within the municipal boundaries of the TOWN, and simultaneously herewith the TOWN will file an application in the Circuit Court of the 17th Judicial Circuit in and for Broward County, Florida, to clarify that the 1979 Final Judgment did not result in the ouster of the Subject Property from TOWN, but was injunctive in nature and merely restrained the TOWN from exercising municipal functions over the Subject Property.

NOW, THEREFORE, in consideration of the premises and the sum of Ten Dollars (\$10.00) and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and the mutual covenants and conditions hereinafter set forth, the parties, intending to be legally bound, hereby agree:

1. The matters set forth in the preamble above are true and correct and are incorporated herein by reference.
2. The Subject Property shall hereafter be deemed to be within the municipal boundaries of the TOWN and will therefore be subject to all laws and ordinances of the TOWN.
3. Although the Subject Property is presently undeveloped land, SOUTHERN plans to develop the Subject Property for single family residential use (one unit per acre) with lots consisting of a minimum of 35,000 square feet of net dry land, and, to that end, has filed with the TOWN applications for development permits, including but not limited to,

plat, site plan and building permit applications for development as a single family residential community (the "Applications").

4. The TOWN has accepted and processed the applications concurrently and took all action necessary to process the applications. Any approvals granted by the TOWN shall be promptly transmitted to all other governmental agencies which are necessary in order for the TOWN approval to be effective, and otherwise reasonably cooperate with SOUTHERN regarding approvals to be sought with regard to the Subject Property.

5. This Agreement is in settlement of any and all issues arising out of the Final Judgment.

6. Each party shall pay its own attorneys' fees and costs incurred in connection with the negotiation, preparation and execution of this Agreement. In the event of any dispute regarding this Agreement, the prevailing party shall be entitled to recover all of its attorneys' fees, costs and other disbursements at all trial and appellate levels and post-judgment proceedings.

7. This Agreement may not be changed, modified, supplemented or terminated, nor may any of the obligations hereunder or provisions hereof be waived, except by an instrument executed by the parties hereto. Nothing in this Agreement shall prohibit the parties hereto from applying for, processing or considering additional development applications provided for by applicable law.

8. This Agreement contains the entire agreement between the parties hereto relating to the transactions contemplated hereby and all prior or contemporaneous agreements, understandings, representations and settlements, oral or written are merged herein.

9. This Agreement shall be construed and enforced in accordance with the laws of the State of Florida and, to the fullest extent permitted, venue shall lie exclusively in Broward County, Florida.

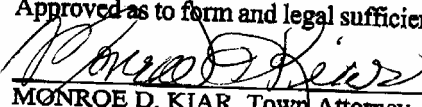
10. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which, together, shall constitute a single instrument.

11. Upon execution of this Agreement by all parties, counsel shall submit an Agreed Order in the form attached hereto as Exhibit B requesting the Court to approve and adopt this Agreement as an Order of the Court and to reserve jurisdiction to enforce the terms of the Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered as of the day and year first above written.

TOWN OF DAVIE

By: _____
Name: _____
Title: _____

Approved as to form and legal sufficiency

MONROE D. KIAR, Town Attorney

ATTEST:

Town Clerk

STATE OF FLORIDA)
)SS
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____ and _____, of the Town of Davie, a Florida Municipal Corporation, who are personally known to me or who have produced _____ as identification, freely and voluntarily under authority duly vested in them by said municipality, and that the seal affixed thereto is the true seal of said Town.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2005.

NOTARY PUBLIC

My Commission Expires:

Type, Print or Stamp Name

WITNESSES:

[Signature]
Print Name: Regina Cebun

[Signature]
Print Name: Dagmara Rodriguez

STATE OF FLORIDA)
)SS
COUNTY OF BROWARD)

SOUTHERN HOMES OF DAVIE II,
L.L.C. a Florida limited liability company

By: [Signature]
Print Name: Heather Capella
Title: President Southern Homes of Broward Div. Manager

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take acknowledgments, the foregoing instrument was acknowledged before me by _____, as President of Southern Homes of Davie II, L.L.C., a Florida limited liability company, who is personally known to me or who has produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this _____ day of _____, 2005.

Virginia Ann Decicco
NOTARY PUBLIC

My Commission Expires:

Virginia Ann Decicco
Type: Print of Commission 316038
Expires May 4, 2008
Bonded Troy Pain - Insurance, Inc. 800-385-7019